

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66115; File No. SR-NYSEArca-2011-101)

January 6, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services Replacing Numerical Thresholds with Percentage Thresholds for the Investor Tiers' Volume Requirements

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 30, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Schedule") to replace numerical thresholds with percentage thresholds for the Investor Tiers' volume requirements. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 2012, NYSE Arca proposes to amend the Schedule, as described below.

Investor Tier Volume Requirements: Replacing Numerical Thresholds with Percentage Thresholds

Effective June 1, 2011, NYSE Arca introduced two pricing tier levels, Investor Tier 1 and Investor Tier 2.<sup>4</sup> Currently, Investor Tier 1 allows customers to earn a credit of \$0.0032 per share and Investor Tier 2 allows customers to earn a credit of \$0.0030 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities when they meet all of the following criteria on a monthly basis:

- Maintain a ratio of cancelled orders to total orders of less than 30%. In calculating this ratio, the Exchange will exclude Immediate-or-Cancel orders, which are liquidity removing in nature.
- Maintain a ratio of executed liquidity adding volume to total volume of greater than 80%.
- Firms must add at least 35 million shares of liquidity per day on NYSE Arca to qualify for Investor Tier 1 and add at least 10 million shares of liquidity per day on NYSE Arca to qualify for Investor Tier 2. Trade activity on days when the market closes early is excluded from both Investor Tiers.

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<sup>4</sup> See Securities Exchange Act Release No. 64593 (June 3, 2011), 74 FR 33380 (June 8, 2011) (SR-NYSEArca-2011-34)[sic].

The Exchange proposes to change the Investor Tier 1 and Investor Tier 2 adding volume requirements from numerical thresholds (e.g., 35 Million shares) to percentage thresholds of average US consolidated daily volumes (e.g., 0.45% of the volumes). Volume requirements to reach the tiered pricing levels will adjust each calendar month based on US average daily consolidated share volume in Tape A, Tape B, and Tape C securities (“US ADV”) for that given month. US ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association Plan for Tapes A, B and C securities; however, US ADV does not include trades on days when the market closes early.

Transactions that are not reported to the Consolidated Tape, such as odd-lots and Crossing Session 2 transactions, are not included in US ADV. The Exchange currently makes this data publicly available on a T + 1 basis from a link at <http://www.nyxdata.com/US-and-European-Volumes>.

In order to adopt a requirement that is consistent from month to month, NYSE Arca is modifying both the 35 million share volume per day requirement (for Investor Tier 1) and 10 million share volume per day requirement (for Investor Tier 2) so that they are directly tied to a customer’s percentage of total US ADV. Effective January 1, the per day volume requirement for Investor Tier 1 will be changed from the current 35 million share adding volume per day requirement to adding liquidity that represents 0.45% or more of the total US ADV. Also effective January 1, the per day volume requirements for Investor Tier 2 will be changed from the current 10 million share adding volume per day requirement to adding liquidity that represents 0.20% or more, but less than 0.45% of the total US ADV. All other requirements for Investor Tier 1 and Investor Tier 2 remain unchanged.

For example, if US ADV is 8.5 billion shares in a given month, the minimum adding ADV requirement for Investor Tier 1 would be 38.250 million adding shares a day, and the minimum adding ADV requirement for Investor Tier 2 would be 17.0 million adding shares a day.

NYSE Arca is moving to the percentage approach for several reasons. The Exchange believes that it is a more straightforward way to communicate floating volume tiers and, as noted in a previous filing, other exchanges have adopted a similar approach.<sup>5</sup> The Exchange notes that the percentage approach allows tiers to move in sync with consolidated volume, whereas the current approach has distinct break points and is set at varying percentages of consolidated volume. The proposed change will ensure that a customer providing that level of liquidity will consistently receive the Investor Tier 1 or Tier 2 credits, whereas a customer providing that level of liquidity under the current schedule might receive the Investor Tier 1 or Tier 2 credits in some months but not in others as overall market volumes fluctuated.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable

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<sup>5</sup> See Securities Exchange Act Release No. 64627 (June 8, 2011), 74 FR 34788 (June 14, 2011) (SR-NYSEArca-2011-35)[sic]. See Securities Exchange Act Release No. 64453 (May 10, 2011), 76 FR 28252 (May 16, 2011); and Securities Exchange Act Release No. 64452 (May 10, 2011), 76 FR 28252 (May 16, 2011)[sic]. See Nasdaq Stock Market LLC Price List - Trading & Connectivity, “Add and Remove Rates” at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates>, and EDGX Exchange Fee Schedule, n. 1 at <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the replacement of share thresholds with percentage thresholds for the adding liquidity requirements in the Investor Tiers, NYSE Arca believes that the change is reasonable, because it will result in more predictability from month to month with respect to the levels of liquidity provision required to receive the applicable pricing levels. Although the changes will make it easier to achieve the applicable Investor Tier in some months and more difficult in other months, depending on overall market volumes, NYSE Arca believes the levels of activity required to achieve the applicable Investor Tier are generally consistent with existing requirements for these tiers. Moreover, like existing pricing tiers tied to volume levels, as in effect at NYSE Arca and other markets, the proposed pricing tiers are equitable and non-discriminatory because they are open to all customers on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes. NYSE Arca believes that the overall effect of the changes may make it easier for customers to receive higher rebates in months with lower trading volumes, thereby reducing prices for those customers that were previously unable to qualify for an enhanced credit, but that are able to do so under the revised pricing schedule.

NYSE Arca also notes that a number of exchanges previously adopted tiers based on percentage thresholds, including Nasdaq, and Direct Edge EDGX.<sup>8</sup> NYSE Arca also previously adopted tiers based on percentage thresholds for its Tier 1, Tier 2, and Tier 3.<sup>9</sup>

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<sup>8</sup> See n. 5.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>9</sup> See Securities Exchange Act Release No. 64627 (June 8, 2011), 74 FR 34788 (June 14, 2011) (SR-NYSEArca-2011-35)[sic].

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-101 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2011-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2011-101 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).